



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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February 20, 2003

CERTIFIED RETURN RECEIPT

7099 3400 0016 8894 6086

Dan Powell
Emery Industrial Resources, Inc.
262 South 800 West
Payson, Utah 846451

Re: Findings of Fact, Conclusions of Law and Order for the Emery Industrial Resources, Inc.
Cherry Hill Park Mine, M/49/021, Utah County, Utah

Dear Mr. Powell:

On January 28, 2003 an Informal Conference was held after request by Dan Powell, Emery Industrial Resources, Inc.(EIRI), for the Cherry Hill Park Mine (the mine), Oil, Gas and Mining file number M/49/021. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the following shall constitute the Findings of Fact, Conclusions of Law and Order in this matter:

Background

By telephone on January-16, 2003, EIRI requested an Informal Conference in response to the Division's January 9, 2003 Proposed Agency Action, and the Division's May 4, 2002 Notice of Non-Compliance. The Division's proposed action found that EIRI was operating an unpermitted, unbonded large mining operations at the Cherry Hill Park Mine dating to July, 1994

The Informal Conference

On January 28, 2003 an Informal Conference was conducted in Suite 1210, Conference Room A of the Department of Natural Resources Building. Lowell Braxton served as Conference Officer. A record of the conference was made by Kerry J. Sorensen, RPR, and is available for purchase from Thacker & Company, (801) 983-2180.

The Division was represented by Mary Ann Wright, Associate Director of Mining, Wayne Hedberg, Permit Supervisor, Minerals Regulatory Program, and Lynn Kunzler Sr. Reclamation Specialist, Minerals Regulatory Program. Susan White and Steve Alder attended. EIRI was represented by Dan Powell.

Wayne Hedberg and Lynn Kunzler reviewed the permit chronology causing the May 14, 2002 Division Notice of Non-Compliance, and culminating in the service of the January 9, 2003 Proposed Notice of Agency Action. This chronology is attached as Addendum A.

Mr. Powell stated he was not prepared to rebut the chronology, but opined that the Division's assertion that certain of his permit applications contained "outstanding technical difficulties" was unfounded.

Mr. Powell indicated that the Division's responses to his permit submissions were untimely, and suggested certain correspondence by the Division had been sent to an incorrect address, while further asserting that this address was that of a competitor. (The Division maintained the address had been provided by Mr. Powell.)

Mr. Powell indicated that the single unresolved issue was posting of a bond and cited his recent attempts to acquire reclamation surety for the mine. A letter to the Division dated Jan 27, 2003 signed by Cindi D. Parmley, Cornerstone Insurance Agency, Inc.(attached hereto as addendum B) was submitted as a current attempt by EIRI to acquire reclamation surety for the mine.

Mr. Powell suggested that the Division's acreage calculations for mining disturbance (the basis for the mandated surety) may not have adequately reflected disturbances by others prior to his occupation of the site.

Findings of Fact and Conclusions

1. UCA 40-8 requires, prior to commencement of mining operations other than small mining operations, the operator provide reclamation surety in the form and amount contemplated at UCA 40-8.
2. Mining disturbances greater than 5 acres are large mining operations.
3. Since 1994, EIRI has conducted large mining operations at the mine without an approved permit, and without the mandated reclamation surety.
4. A Notice of Agency Action is the appropriate mechanism for the Minerals Regulatory Program to use when initiating formal and informal adjudicative proceedings.
5. The Proposed Notice of Agency Action dated January 9, 2003, was appropriately served.
6. The request for the Informal Conference was timely.
7. The position established in 1994 by the Division and stated in the Proposed Notice of Agency Action asserting an exceedance of disturbed area allowable under the Small Mining regulations at the mine was not factually reversed at the informal conference
8. EIRI has exceeded the allowable disturbances under the Small Mining Regulations for the mine. The operator is required to file true and correct maps and other information related to mining related disturbances to facilitate calculation of reclamation surety. A Large Mining Permit is required.
9. Disturbances under Large Mining Operations regulations require a reclamation surety.
10. The Division has calculated a reclamation bond of \$43,500 for the mine as contemplated at UCA 40-8-14 (2).
11. Mr. Powell's understanding of Division permitting and bonding requirements by virtue of the exposure to and correspondence with the Division as evidenced in Addendum A makes him knowledgeable of the requirements of the Minerals Regulatory Program.
12. On January 28, 2003, Mr. Powell provided a letter signed by Cindi Parmley, Cornerstone Insurance Agency indicating Emery Industrial Resources, Inc. had applied for a surety bond for the mine in the amount of \$43,500.

Order

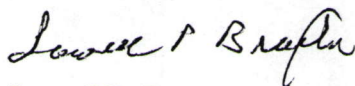
The Proposed Agency Action found at the top of p. 2 of the 1-9-03 Proposed Agency Action letter is modified as follows:

1. Due to lack of the mandated reclamation surety, EIRI shall immediately cease all mining operations at the Cherry Hill Park Mine until written approval to commence mining operations has been received from the Division.
2. The Division shall inspect, document, and report the condition of mining related disturbances at the Cherry Hill Park Mine, and file the report with the Associate Director of Mining within 10 calendar days (weather permitting) of the issuance of this order.
3. If within 30 days of issuance of this order EIRI has not provided to the Division an acceptable form and amount of surety to address current mining related disturbances at the Cherry Hill Park Mine, the Division will initiate an agency action before the Board of Oil, Gas and Mining asking for immediate reclamation of EIRI's mining related disturbances, and for payment of civil penalties as contemplated at UCA 40-8-9.

Remarks

Within 30 days of your receipt of this Order, you or your agent may make a written appeal of this Order to the Board of Oil, Gas and Mining. Such appeal should be addressed to the Secretary, Board of Oil, Gas and Mining at the address shown above.

Sincerely,



Lowell P. Braxton
Conference Officer

vs

Enclosures

cc: Mary Ann. Wright
Wayne. Hedberg
Steve. Alder

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Emery Industrial Resources

Cherry Hill Park Mine M/049/021

Permit Chronology (Updated January 2003)

July 8, 1992	DOGM received Small Mining Operations Notice for Cherry Hill Project from operator.
July 20, 1992	Division accepted SMO for Cherry Hill Project – no variances.
July 22, 1993	Site inspected, area estimated to be just less than 5 acres.
July 7, 1994	Letter from Division to Dan Powell – asked about status of LMO application for this project – Questioned his intention of plans to go to a large mining operation.
July 27, 1994	Site inspection found disturbed area greater than 5 acres. Operator had estimated 7 acres, and has posted a reclamation surety with Utah County for 9 acres of disturbance.
July 27, 1994	Site disturbance map received by the Division from operator.
August 24, 1994	Letter to operator requiring submittal of LMO within 45 days.
October 7, 1994	Operator provided copy of bonding documents to DOGM that have been filed with Utah County (9 acres bonded at \$1,600 per acre, total bond is \$14,400.00 – LOC made out to Utah Co. Board of Commissioners). Operator also requested an additional 30 days to submit LMO.
October 14, 1994	Division granted 30-day extension.
November 14, 1994	Division received original LMO from the operator.
January 31, 1995	Annual report submitted – identified approximately 8 acres of disturbance.
June 2, 1995	Division sends deficiency review comments of LMO to Emery Industrial.
February 23, 1996	Annual report submitted – identified approximately 12 acres of disturbance.
October 27, 1997	Letter sent to Emery Industrial requested operator to respond within 45 days of the June 2, 1995 review, which is now over two years old.
December 4, 1997	Operator requested an additional 90 days to complete response to the Division's deficiency review, stating that he would need outside help to complete land surveys, soil surveys, etc.
January 12, 1998	Operator's request for an additional 90 days is denied, operator given until February 27, 1998 to submit formal response to the Division's review. A timetable was to be submitted which outlined when information that was not available would be submitted.

February 5, 1998	Annual report submitted – approximately 13 acres disturbed.
February 27, 1998	Received fax from operator (re: response for completion of permitting), which stated that he would reclaim a portion of the site, and a certified copy and an updated map would follow.
December 9, 1998	Division sent letter to Emery Industrial requesting a formal submission of all permitting materials collected to date. The Division never received the certified copy or map. Letter stated that if sufficient acreage had not been reclaimed to reduce the disturbed area to less than five acres, then a complete LMO must be filed with the Division by January 31, 1999.
January 29, 1999	Annual report submitted – approximately 5 acres reclaimed (this would leave 8 acres based on 1998 annual report).
March 3, 1999	Operator submits revised LMO.
September 22, 1999	Site inspected – GPS survey of the disturbed area shows 20.6 acres disturbed (19.7 acres which will require reclamation, and 0.9 acres that will remain unreclaimed). The 5 acres reported as being reclaimed was 4.3 acres (as determined with the GPS) and reclamation had not been completed (topsoil had not been replaced and no evidence that the area had been seeded).
September 30, 1999	Division completes second deficiency review of LMO (3/3/99 submittal).
February 22, 2000	Annual report submitted – identified only 8 acres of disturbance plus 5 acres that had been reclaimed.
January 23, 2001	Sent CRR letter stating we have not received a response to our 9/30/99 review comments to date. Another copy of comments sent w/letter. Please respond w/in 30 days from receipt of this letter. Operator received letter on January 29, 2001.
January 29, 2001	Annual report submitted – identified 8 acres of disturbance.
May 7, 2001	Operator came into office, claimed letter DOGM sent 1/23/2001 was sent to the wrong address (went to Stephen Powell instead of Dan Powell). Hand delivered a copy of the letter to Dan Powell today and gave him until the end of June, 2001 to respond.
June 29, 2001	Letter received from the operator requesting a meeting to discuss the review and a timeframe to make a submission.
July 9, 2001	Letter to operator establish July 30, 2001 date for meeting at the Division.
July 30, 2001	Meeting held at Division to discuss DOGM 9/30/99 review letter. Operator granted another 45 days to submit information @9/14/2001.
August 16, 2001	Sent letter documenting meeting held on 7/30/2001 and commitments made by operator. Operator agreed to have response to DOGM w/in 45 days from meeting

date, or by 9/17/2001. At the meeting it was discussed that it is likely that the operation will be transferred to Utah Rock, Inc. once the permit is finalized.

September 6, 2001	Site inspection performed, noted Musk Thistle weed problem
September 13, 2001	Sent letter stating site inspected 9/6/2001 showed signs of Musk Thistle infestation. Requested operator control this noxious weed now, which will make revegetation easier upon final reclamation. DOGM rules do not require this, but the Utah Noxious Weed Act does.
September 17, 2001	Phone call requesting another two week extension to respond. Granted to 10/1/2001.
January 22, 2002	Sent CRR Division Directive. It has been over 100 days since Division extended date to 10/1/2001 to submit response to 9/30/99 review. Must contact Associate Director w/in 10 days to schedule a meeting to discuss options to remedy situation.
January 31, 2002	Phone call to Dan Powell regarding 1/22/2002 CRR letter. He only occasionally gets to Price to pick up mail (he lives in Utah County). The letter was faxed to him today; therefore, operator received DOGM 1/22/02 CRR letter today! Response due by 2/11/02.
February 11, 2002	Phone call from operator - wants meeting scheduled for 2/25/02.
February 19, 2002	Phone call from operator - requested meeting to be rescheduled for early March. Operator and Division agree on March 12, 2002.
February 27, 2002	Received 2001 annual report. States no activity since 1998. Current plans call for possible mining during spring/summer with follow up reclamation as needed.
March 12, 2002	Meeting with Mr. Powell, Associate Director and minerals staff at DOGM. Went over operator's proposed responses to outstanding technical deficiencies. Mr. Powell agrees to provide formal response to DOGM no later than March 22, 2002.
March 19, 2002	Letter sent to operator outlining agreements reached during March 12 th meeting.
April 3, 2002	Phone call to Dan Powell requesting status of technical response. Mr. Powell states difficult time acquiring all requested information. Taxes due, needs couple more weeks to provide the formal submittal.
May 14, 2002	Notice of Non-compliance and Division Directive faxed and certified mail to operator ordering suspension of operations, posting of reclamation bond and submittal of remaining permit deficiencies. 30-day deadline established from receipt of letter to post surety.
June 11, 2002	DOGM received response to our 9-30-1999 technical review letter.
June 26, 2002	Site inspected, site inactive at time of inspection. Operator failed to show up for scheduled inspection to discuss topsoiling concerns and reclamation performed.

July – Dec. 2002	Several phone calls and personal contacts with the operator to discuss where the reclamation surety was. Operator would state that he is working on it and should have it to us within the next week to ten days; or some calls stated it would be delivered within the week. Each contact was not officially documented.
January 9, 2003	Sent proposed Agency Action letter to be delivered by Utah County Sheriff's Office, for unfulfilled mitigation requirements pertaining to DOGM's Notice of Noncompliance – Required \$43,500 surety to be posted by June 28, 2002. The proposed agency action is to deny approval of the LMO Notice of Intent, withdraw acceptance of SMO submitted 7/8/1992 and seek an Order from the Board requiring operator to commence reclamation of existing mining related disturbances on a schedule to be determined by DOGM. If operator wishes to appeal this action formally before the Board, or informally with the Division's Director, he must notify the Division within 10 days. Failure to file such a request may preclude operator from further participation, appeals or judicial reviews. If this is not appealed, the proposed Agency Action will become final and the Division will seek an Order from the Board as described above.
January 14, 2003	Utah County Sheriff served operator with the 1-9-2003 letter. DOGM received notification from the sheriff on 1-17-2003.
January 16, 2003	Operator called the Division to set up an informal conference before the Division Director – conference scheduled for January 28, 2003 at 10:00 a.m.

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January 27, 2003

State of Utah
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Salt Lake City, UT 84114-5801

To Whom it May Concern:

Please note that Dan Powell of Emery Industrial Resources, Inc. in Payson, Utah is currently applying and awaiting approval of the \$43,500 surety bond required for Cherry Hill Park, (your file No.: M/49/0021).

We have submitted the application to several approved Surety companies and will be able to give him and answer regarding eligibility in a few days.

Should you have any questions, please give me a call.

Sincerely,

CORNERSTONE INSURANCE AGENCY, INC.

Cindi D. Parmley
Cindi D. Parmley

*Hand delivered by D Powell
at the informal conference for M/049/021 L/S 12*
RECEIVED
JAN 28 2003
DIV. OF OIL, GAS & MINING



CORNERSTONE
INSURANCE AGENCY INC.